

## PATENT

Atty. Dkt. No. 003493.00360 (ATT/2001-0335)

**REMARKS**

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are unpatentable, anticipated or obvious under the provisions of 35 U.S.C. §§101, 102 or 103, respectively. Thus, the Applicants believe that all of these claims are now in allowable form.

**I. IN THE CLAIMS**

The Examiner has objected to claims 1, 5, 6, 8, 10, 12, 13, 20-24, 33, 37 and 38 because of informalities. Namely, they are written in outline format and should be written in sentence form. In response, the Applicants have amended claims 1, 5, 6, 8, 10, 12, 13, 20-24, 33, 37 and 38 into sentence form. As such, Applicants respectfully request the objection be withdrawn.

**II. REJECTION OF CLAIMS 1-38 UNDER 35 U.S.C. §101 STATUTORY DOUBLE PATENTING**

The Examiner has provisionally rejected claims 1-38 in the Office Action under 35 U.S.C. §101 statutory double patenting as claiming the same invention as that of claims 1-38 of copending Application No. 10/056,683. Applicants direct the Examiner's attention to the fact that claims 1-38 in co-pending Application No. 10/056,683 are directed towards apparatus claims and computer readable medium claims and that claims 1-38 of the instant application are directed towards method claims. Therefore, a statutory double patenting rejection is improper because the claims 1-38 of the instant application and claims 1-44 of co-pending Application No. 10/056,683 are not the "same invention". As such, the Applicants respectfully request the rejection be withdrawn.

**III. REJECTION OF CLAIMS 1, 5-9, 20-34 AND 36 UNDER 35 U.S.C. §102**

The Examiner has rejected claims 1, 5-9, 20-34 and 36 in the Office Action under 35 U.S.C. § 102 as being anticipated by Torres (US Patent 6,725,263, issued April 20, 2004, hereinafter referred to as "Torres.") The Applicants respectfully traverse the rejection.

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Torres teaches systems and methods for analyzing network traffic. The method includes forecasting a total amount of traffic transmitted to and from each of the plurality of nodes based on observed traffic statistics and an estimated growth. (See Torres, Abstract.)

The Examiner's attention is directed to the fact that Torres fails to teach or suggest the novel concept of a method for managing a data network, the method comprising the step of determining whether to sample the object in accordance with a probabilistic parameter, as positively claimed by Applicants' independent claim 1. Specifically, Applicants' independent claim 1 positively recites:

1. A method for managing a data network, comprising the steps of:  
receiving an object, wherein the object is characterized by at least one attribute and wherein the object comprises at least one data element;  
determining whether to sample the object in accordance with a probabilistic parameter;  
sampling the object in response to said determining step; and  
processing the sample in response to said sampling step. (Emphasis added.)

The Applicants' invention teaches a method for managing a data network, the method comprising the step of determining whether to sample the object in accordance with a probabilistic parameter. The Applicants' invention uses a probabilistic parameter that determines the probability that a given flow will be sampled. (See Applicants' specification, e.g., paragraph [42].) The value of *z* can be set to achieve the desired accuracy or traffic volume. (See *Id.*)

In contrast, Torres completely fails to anticipate Applicants' invention. Torres only teaches forecasting a total amount of traffic transmitted to and from each of the plurality of nodes based on observed traffic statistics and an estimated growth. (See Torres, Abstract.) Applicants respectfully submit that Torres teaches away from the Applicants' invention because Torres teaches that all of the flows in a traffic matrix are compared. (See Torres, col. 8, ll. 23-37.) In fact, the traffic matrix is generated from the total projected sent and received traffic volumes for each virtual node and the observed statistics. (See Torres, col. 7, ll. 6-10, emphasis added.) Therefore, Torres does not teach a method for managing a data network, the method comprising the step of

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determining whether to sample the object in accordance with a probabilistic parameter.  
As such, the Applicants respectfully submit that Torres clearly does not anticipate Applicants' independent claim 1.

Furthermore, dependent claims 5-9, 20-34 and 36 depend, either directly or indirectly, from claim 1 and recite additional limitations. As such, and for the exact same reason set forth above, the Applicants submit that claims 5-9, 20-34 and 36 are also patentable and are not anticipated by Torres. As such, the Applicants respectfully request the rejection be withdrawn.

#### **IV. REJECTION OF CLAIMS 2-4, 10-19, 35, 37 AND 38 UNDER 35 U.S.C. § 103**

The Examiner has rejected claims 2-4, 10-19, 35, 37 and 38 in the Office Action under 35 U.S.C. § 103 as being unpatentable over Torres in view of Kung, et al. (U.S. Patent 6,775,267, issued August 10, 2004, hereinafter referred to as "Kung").

Applicants respectfully traverse the rejection.

As Kung was filed on December 30, 1999 and issued on August 10, 2004 which is after the Applicants' January 24, 2002 filing date, Kung is a 102(e) type reference. Additionally, Kung was assigned to AT&T Corp. (Please see Assignee's name on the first page of the Kung patent).

The Applicants' invention is also assigned to AT&T Corp, and the assignment was recorded on January 24, 2002, (Reel/Frame 012541/0048) (See enclosed Notice of Recordation). Thus, the Applicants' invention and Kung were commonly assigned at the time of the Applicants' invention. Since this application was filed on or after November 29, 1999, Kung does not preclude patentability under the provisions of 35 U.S.C. § 103(c), as amended by the American Inventors Protection Act of 1999. See MPEP 706.02(l)(1).

Additionally, Torres alone does not teach or suggest the invention of claims 2-4, 10-19, 35, 37 and 38. Therefore, the Applicants submit that claims 2-4, 10-19, 35, 37 and 38 fully satisfy the requirements of 35 U.S.C. § 103 and are patentable thereunder. Accordingly, the Applicants respectfully request the foregoing rejections to claims 2-4, 10-19, 35, 37 and 38 be withdrawn.

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**Conclusion**

Thus, the Applicants submit that claims 1-38 now fully satisfy the requirements of 35 U.S.C. §§101, 102 and 103. Consequently, the Applicants believe that these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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